



6351-01-P

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent to Extend Collection

#### 3038-0091: Disclosure and Retention of Certain Information Relating to Cleared Swaps Customer Collateral

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information, including proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on proposed extension of the existing collection of information relating to Cleared Swaps Customer Collateral.

**DATES:** Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by OMB Control No. 3038-0091 by any of the following methods:

- The Agency’s web site, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the web site.

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method and identify that it is for the renewal of Collection Number 3038-0091. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mark Bretscher, Special Counsel, Division of Swap Dealers and Intermediary Oversight, Commodity Futures Trading Commission, (312) 353-0529; email: [mbretscher@cftc.gov](mailto:mbretscher@cftc.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed extension of an existing collection of information listed below. An agency

may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*Title:* Disclosure and Retention of Certain Information Relating to Cleared Swaps Customer Collateral (OMB Control No. 3038-0091). This is a request for an extension of a currently approved information collection.

*Abstract:* Section 724(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-023, 124 stat. 1376, amended the Commodity Exchange Act (“CEA”), 7 U.S.C. 1 *et seq.*, to add, as section 4d(f) thereof, provisions concerning the protection of collateral provided by a Cleared Swaps Customer to margin, guaranty, or secure a swap cleared by or through a derivatives clearing organization (“DCO”).

Broadly speaking, in cleared swaps transactions customers provide collateral to futures commission merchants (“FCMs”) through whom they clear their transactions. FCMs, in turn, may provide customer collateral to DCOs, through which FCMs clear transactions for their customers. 17 CFR Part 22 is intended to implement CEA section 4d(f).

Several of the sections of Part 22 require collections of information.

Section 22.2(g) requires each FCM with Cleared Swaps Customer Accounts to compute daily the amount of Cleared Swaps Customer Collateral on deposit in Cleared Swaps Customer Accounts, the amount of such collateral required to be on deposit in such accounts and the amount of the FCM’s residual financial interest in such accounts. The purpose of this collection of information is to help ensure that FCMs’ Cleared Swaps Customer Accounts are in compliance at all times with statutory and regulatory requirements for such accounts.

Section 22.5(a) requires an FCM or DCO to obtain, from each depository with which it deposits cleared swaps customer funds, a letter acknowledging that such funds belong to the Cleared Swaps Customers of the FCM, and not the FCM itself or any other person. The purpose of this collection of information is to confirm that the depository understands its responsibilities with respect to protection of cleared swaps customer funds.

Section 22.11 requires each FCM that intermediates cleared swaps for customers on or subject to the rules of a DCO, whether directly as a clearing member or indirectly through a Collecting FCM, to provide the DCO with information sufficient to identify each customer of the FCM whose swaps are cleared by the FCM. Section 22.11 also requires the FCM, at least once daily, to provide the DCO with information sufficient to identify each customer's portfolio of rights and obligations arising out of cleared swaps intermediated by the FCM. The purpose of this collection of information is to facilitate risk management by DCOs in the event of default by the FCM, to enable DCOs to perform their duty, pursuant to section 22.15, to treat the collateral attributed to each customer of the FCM on an individual basis.

Section 22.12 requires that each DCO and FCM, on a daily basis, calculate, based on information received pursuant to section 22.11 and on information generated and used in the ordinary course of business by the DCO or FCM, and record certain information about the amount of collateral required for each Cleared Swaps Customer and the sum of these amounts. As with section 22.11, the purpose of this collection of information is to facilitate risk management by DCOs and in the event of default by the FCM, to enable

DCOs to perform their duty, pursuant to section 22.15, to treat the collateral attributed to each customer of the FCM on an individual basis.

Section 22.16 requires that each FCM who has Cleared Swaps Customers disclose to each of such customers the governing provisions, as established by DCO rules or customer agreements between collecting and depositing FCMs, relating to use of customer collateral, transfer, neutralization of the risks, or liquidation of cleared swaps in the event of a default by a Depositing FCM relating to a Cleared Swaps Customer Account. The purpose of this collection of information is to ensure that Cleared Swaps Customers are informed of the procedures to which accounts containing their swaps collateral may be subject in the event of a default by their FCM.

Section 22.17 requires that each FCM produce a written notice of the reasons and the details concerning withdrawals from a Cleared Swaps Customers Account not for the benefit of Cleared Swap Customers if such withdrawal will exceed 25% of the FCMs residual interest in such account.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed extension of collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.<sup>1</sup>

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

*Burden Statement:* The Commission is revising its estimate of the burden for this collection for 78 respondents (63 FCMs and 15 DCOs). The respondent burden for this collection is estimated to be as follows:

*Estimated Number of Respondents:* 78.

*Estimated Average Burden Hours Per Respondent:* 331.

*Estimated Total Annual Burden Hours:* 25,890.

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<sup>1</sup> 17 CFR 145.9.

*Frequency of Collection:* Section 22.2(g) – Daily. Section 22.5(a) – Once.

Section 22.11 – Daily. Section 22.12 – Daily. Section 22.16 – Once. Section 22.17 –

On occasion.

There is no capital cost associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: July 14, 2020.

Robert Sidman,

*Deputy Secretary of the Commission.*

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